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From: Turley, Jennifer

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Subject: Water Law News for January 31, 2014



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for January 31, 2014

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Climate Change

EPA Updates Stormwater Calculator To Factor in Climate Change Impacts

The Environmental Protection Agency on Jan. 30 released an updated version of its tool for calculating annual stormwater runoff for different locations across the U.S....

Drilling

Shell Cancels 2014 Arctic Drilling Plan In Wake of NEPA Ruling by Ninth Circuit

Royal Dutch Shell Plc has decided to halt its 2014 oil exploration program for Arctic waters off the coast of Alaska because of an appeals court ruling on the adequacy of federal environmental impact analyses, the company's chief executive...

Drilling

Counties, Cities Move to Assert Authority Over Fracking in Atlantic Coast States

A state supreme court ruling and various ordinances are allowing localities in states along and near the Atlantic Coast to assert authority over hydraulic fracturing in those states....

Drilling

Efforts to Ban Fracking in Western States Challenged in Court by Oil, Gas Interests

Local and citizen efforts spreading across the West to ban or restrict hydraulic fracturing often are being met by legal challenges from oil and gas industry interests....

Drilling

Localities' Efforts to Ban Fracking Tested

By Lawsuits, Raise Issues of State Authority

Local efforts to curb or ban the use of directional drilling and high-volume hydraulic fracturing in oil and gas production are on the rise, often prompting lawsuits by industry and declarations of preemptive authority by state regulators....

Drilling

Localities in Midwest Assert Authority Over Fracking; Challenge Filed in Ohio

In Midwestern states, some localities are asserting what they say is their authority to ban or restrict hydraulic fracturing, but at least one state is being joined by the oil and gas industry in challenging that authority....

Great Lakes

Coast Guard Rule on Great Lakes Cargo Limits Some Residue Discharges

A final rule being published Jan. 31 by the U.S. Coast Guard establishes limits on residue discharges from ships carrying bulk dry cargo such as limestone, iron ore and coal in the Great Lakes....

Water Pollution

EPA Hails Tapping of Private Capital For \$1.2 Billion Green Infrastructure Project

A suburban county in Maryland that faces a 2025 deadline for slashing the amount of polluted stormwater flowing from developed land into its waterways is poised to obtain \$1.2 billion in private financing for "green infrastructure"...

Water Resources

Conservation Urged, Legislation Planned On California Draught; Obama Lends Support

California Gov. Jerry Brown (D) met with water interests in Southern California on Jan. 30 to discuss the statewide drought emergency and water management issues, one day after speaking by phone to President Barack Obama....

Water Resources

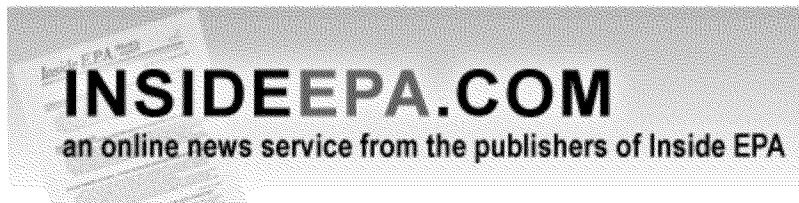
Order Proposed to Reduce Energy Water Use

A coalition of 60 activist groups drafted an executive order for President Barack Obama to sign to reduce water consumption and water pollution from energy industries. The order drafted by the groups, released Jan. 30, seeks to push federal...

Water Resources

Senators Propose Committee to Manage, Lead Efforts on Energy-Water Nexus

Sens. Ron Wyden (D-Ore.) and Lisa Murkowski (R-Alaska) announced the introduction of a bill that would create a committee to coordinate and streamline federal activities related to energy and water interdependency....



inepa.com

McCarthy Says Climate Change Puts Water Pollution Issues 'On Steroids'

EPA Administrator Gina McCarthy is warning that climate change is exacerbating already difficult water pollution challenges such as high nutrient levels responsible for

toxic algae and dead zones, and is calling for more research to better understand the problem and address it.



EPA:

Strapped agency prepares hundreds of buyouts in sweeping workforce overhaul

Emily Yehle, E&E reporter

Published: Thursday, January 30, 2014

This story was updated at 5:30 p.m. EST.

U.S. EPA is preparing buyouts for hundreds of employees in its regional offices, as part of an effort to pare its workforce in the face of budget constraints.

The buyouts and "early-outs" are scheduled to occur over the next few months, with each office submitting plans to the Office of Personnel Management for approval. Under the former, employees would get a lump sum of \$25,000 to leave; the latter allows certain employees to retire early and immediately receive annuity payments.

Overall, EPA officials hope to restructure the workforce, clearing out some higher-paid positions to make way for more entry-level employees who they say better fit the agency's needs. But not all employees would be replaced, leading to a smaller workforce.

Inside EPA first reported the buyouts in a story last night.

An EPA spokeswoman didn't immediately respond to a request for comment. But in a staffwide email obtained by *Greenwire*, Deputy Administrator Bob Perciasepe called buyouts a better alternative to months of hiring restrictions that have limited offices to hiring only one person for every two or three who left.

"This approach has been difficult to manage because of the unpredictable nature of

attrition, and it has challenged our ability to acquire new talent, build diversity in our staff, develop new skills and provide all of the necessary tools to do the job of protecting human health and the environment," Perciasepe wrote in the December email. "We can and must make long-term changes to support you and the vital work you do for the American people."

Union officials disagree, arguing that getting rid of employees is the wrong place to cut. Instead, EPA should be looking at "pass-through money," or the large part of its budget that goes to grants, contracts and other outside costs, said John O'Grady, who is president of an EPA chapter of the American Federation of Government Employees.

In his view, institutional knowledge -- and environmental enforcement -- should be EPA's priority.

"This is scary," O'Grady said. "That means we're going to have fewer people to go out, to do inspections."

Regional offices and other divisions are collectively offering 19 buyout and early-out packages, he said. If OPM approves all packages by the end of this week, employees will get offers during the first two weeks of February. Those who accept the offers would have to leave by April 4, according to O'Grady.

The plan follows a year that saw EPA under increasing budget pressure, with sequestration forcing furloughs and on-again, off-again hiring freezes. Budget uncertainty has also prompted the agency to adopt a new approach to enforcement, with a draft five-year plan calling for fewer in-person inspections and better use of technology through "Next Generation Compliance" ([Greenwire](#), Dec. 9, 2013).

Indeed, the buyout package for Region 5 cites Next Generation Compliance as one of the focuses of its restructuring plan. By reducing the number of employees and "rebalancing" grade levels, the office hopes to recruit people with technical and legal skills needed to best use new technology to monitor industry and work with partner communities.

"Program priorities have evolved over time based, in part, on executive leadership direction, and specific knowledge of a particular sector, program or pollutant that supported the higher grade at one point may no longer exist, or exist in an amount insufficient to support a stand-alone, high graded position," officials wrote in the plan.

Officials plan to consolidate higher-graded duties and reduce the number of higher-paid nonsupervisory positions. The effort will target 701 positions, with offers made to as many as 146 employees.

Such positions include environmental protection specialists and environmental engineers at the GS-13 level or higher. Their "most complex work" will be reassigned to existing high-level employees, while the less complex work will go to lower positions that have a promotion ceiling to GS-12. Instead of a sole expert in a specific field, there will

be several employees working on issues at different levels -- including lower-paid employees who focus on "multimedia approaches."

Without a buyout, the office has an attrition rate of only 4 percent. But if enough employees accept offers to leave, Region 5 officials may be able to reduce the number of full-time employees by almost 100 -- from 1,160 to 1,072 -- by fiscal 2015, according to the buyout package.

FLOOD INSURANCE:

Reform bill set for passage after Senate rejects key alternative

Annie Snider, E&E reporter

Published: Thursday, January 30, 2014

Senators this morning overcame the largest hurdle to final approval of a flood insurance reform bill, rejecting an amendment that would have preserved scheduled rate increases for policyholders but phased them in more slowly.

The amendment, from Sen. Pat Toomey (R-Pa.), could have sunk the bill from Sens. Robert Menendez (D-N.J.) and Johnny Isakson (R-Ga.). The bipartisan measure would reverse provisions in the 2012 Biggert-Waters Federal Flood Insurance Reform Act that quickly ramp up the price of subsidized coverage. Lawmakers voted down the amendment 34-65.

Before the vote, Toomey said he recognized the problem that swiftly rising rates poses to coastal homeowners. But, he said, "the Menendez bill addresses it the wrong way."

"It does kill the meaningful reform," he said. "By throwing out the movement toward an actuarially sound system, we go back to the insolvent, unsustainable program we had before."

Supporters of the Menendez-Isakson measure, however, argued that the Toomey amendment would have simply prolonged fundamental problems with the program since it did not require the Federal Emergency Management Agency to complete an affordability study and ensure the accuracy of its flood maps before implementing rate

hikes.

Lawmakers also voted on two other amendments:

- Disapproving, 24-75, an amendment from Sen. Tom Coburn (R-Okla.) to allow states to opt out of participation in the National Association of Registered Agents and Brokers, which was created by the Biggert-Waters bill to allow insurers to sell products in multiple states without having to get separate licenses in each. Coburn argued that the provision usurps states' authority.
- Disapproving, 49-50, an amendment from Sens. Dean Heller (R-Nev.) and Mike Lee (R-Utah) to allow any private flood insurance policy accepted by a state to satisfy the National Flood Insurance Program's mandatory purchase requirement.

An amendment from Sen. Jeff Merkley (D-Ore.) was withdrawn. It would have prevented lenders from receiving payment from insurance companies when purchasing a policy on behalf of a borrower.

The upper chamber is expected to vote on final passage of the measure later this afternoon.

ENERGY POLICY:

Sens. Wyden, Murkowski float bill to beef up focus on energy-water nexus

Annie Snider, E&E reporter

Published: Thursday, January 30, 2014

The top leaders of the Senate's energy panel are looking to increase the federal government's focus on the connections between water and energy.

Senate Energy and Natural Resources Chairman Ron Wyden (D-Ore.) and ranking member Lisa Murkowski (R-Alaska) yesterday floated a bill (S. 1971) that would create a panel within the National Science and Technology Committee to coordinate federal activities around the so-called energy-water nexus.

Water is vital to energy production. According to a Congressional Research Service [report](#), 7.6 barrels of water is used to produce every barrel of oil from onshore wells in the United States and that ratio is expected to rise to 12-to-1 by 2025.

At the same time, it takes hefty amounts of energy to move water. Estimates vary, but CRS [estimates](#) as much as 13 percent of the nation's electricity generation goes toward the pumping, treating, collecting and discharging of water.

Recent heat waves have brought the problem to the fore. During the summer of 2012, rising seawater temperatures forced an unprecedented shutdown of a nuclear reactor in Connecticut, and a number of coal and nuclear plants received permission to discharge cooling water that normally would have been considered too hot ([Greenwire](#), Sept. 14, 2012).

But policy decisions about energy are often made without much focus on their water implications, and vice versa, a government watchdog has said.

A number of federal agencies, including the Energy, Agriculture and Interior departments as well as U.S. EPA, have responsibility over water and energy issues, "but these agencies do not consistently or strategically collaborate on these inextricably linked issues to ensure a harmonized approach to energy and water resource planning," a 2012 Government Accountability Office report found ([Greenwire](#), Oct. 16, 2012).

Just getting data on the intersection of energy and water can be a challenge because private energy companies aren't always interested in sharing information about their operations. CRS said consistency, accuracy and currency are issues even when data are available.

Murkowski said her bill would help with this.

"I believe that the federal agencies must do more to ensure that we have the best possible data, technology, and know-how to ensure that the energy-water nexus is well understood and continuously optimized to sustain quality of life and promote economic growth," she said in a statement. "This bill facilitates better interagency cooperation and provides for a national platform to these important energy-water interrelations."

Under the legislation, the secretaries of Energy and Interior would co-chair the new committee. The panel would identify activities at the intersection of water and energy across the federal government; improve coordination on research and development; improve data collection and sharing; and promote collaborations between the public and private sectors, according to the committee. The legislation also would require the Office of Management and Budget to create a "cross-cut" budget that identifies spending across the federal government related to energy and water activities.

FISHERIES:

Begich drafting bill to reauthorize Magnuson-Stevens law

Jessica Estepa, E&E reporter

Published: Thursday, January 30, 2014

Sen. Mark Begich (D-Alaska) said today he plans to introduce in March a bill for reauthorizing the top U.S. fisheries law, the Magnuson-Stevens Fishery Conservation and Management Act.

The chairman of the Senate Commerce, Science and Transportation Subcommittee on Oceans, Atmosphere, Fisheries and Coast Guard said he plans to hold a fourth subcommittee hearing next month on how the 1976 law affects fisheries in the North Pacific.

The senator started hosting fisheries hearings last summer in order to hear from stakeholders across the country. His subcommittee's hearing this morning homed in on issues affecting management on the West Coast.

"Instead of laying down a bill and then having hearings, we're doing the hearings first," he said.

Magnuson-Stevens was last reauthorized in 2006 through a bipartisan effort. That authorization expired at the end of fiscal 2013, and lawmakers in both chambers have been working on their own revamps.

In the House, Natural Resources Chairman Doc Hastings (R-Wash.) introduced a discussion draft last month ([Greenwire](#), Dec. 19, 2013). A hearing on his proposal is scheduled for next week.

DROUGHT:

Calif. closes rivers to fishing as

conditions worsen

Debra Kahn, E&E reporter

Published: Thursday, January 30, 2014

California officials yesterday announced the closure of several rivers to fishermen in order to protect fish that are struggling amid record-breaking drought.

The state's Department of Fish and Wildlife said yesterday that it would close part or all of the Carmel, Big Sur, Pajaro and San Lorenzo rivers to fishing until further notice.

As California's drought intensifies, state and federal officials are exploring options to expand the water supply and reduce usage. President Obama spoke with Gov. Jerry Brown (D) yesterday about providing federal support, including water transfers from the Bureau of Reclamation and lessons from the Agriculture Department in increasing efficiency of irrigation practices and preventing soil erosion.

Obama expressed concern about "conditions that are likely to have significant impacts on the state's communities, economy and environment in the coming months," according to a White House account of the phone call.

Brown is meeting today with Southern California officials to discuss water conservation. In a declaration of drought emergency earlier this month, he asked residents statewide to cut their water use by 20 percent. And Tuesday, the state announced it had hired 125 additional firefighters and 25 fire engines to respond to the elevated risk of wildfires in dry weather.

The river closures are intended to give threatened salmon and steelhead more of a fighting chance against the drought, which is keeping river levels so low that fish can't safely migrate from the ocean to lay eggs in the riverbeds.

"We fully understand the impact these closures will have on California anglers and the businesses related to fishing in California, and we really feel for them," said Department of Fish and Wildlife Director Chuck Bonham. "However, the science is clear. Two-thirds of the wettest part of winter is now behind us and conditions are looking increasingly grim. Under these extreme drought conditions, it is prudent to conserve and protect as many adult fish as possible to help ensure the future of fishing in California."

The state is also closing several other rivers through tomorrow only, due to regulations limiting DFW's authority in the northern part of the state. The agency said it was asking another branch of state government, the Fish and Game Commission, to impose closures on the American, Russian, Eel and other rivers through April 30.

The request to the commission is unprecedented, a DFW spokeswoman said. In previous severe droughts, fish were not yet listed for protection under the state or federal Endangered Species Act. The steelhead and winter- and spring-run chinook salmon are all classified as threatened.

"This epic drought changes everything," said agency spokeswoman Jordan Traverso. "With every salmonid except fall-run chinook now under some form of [Endangered Species Act] coverage, we are operating under completely different rules."

The closures do not affect commercial fishermen, who operate in the ocean and bays. Recreational fishermen and river guides who take them out to fishing spots will be affected, but the closures themselves are more of a formality, since water levels have been too low to do much fishing anyway, one observer said.

"The drought itself has already had a pretty bad effect on business just because of the low water," said Mike Aughney, a former commercial fisherman and editor of the website USAfishing.com, which provides information on fishing conditions. "The word is out that fishing is really poor."

Aughney said the state should do more to protect water levels under normal conditions. He singled out marijuana farmers, who, he said, divert water from streams illegally and bulldoze hillsides to grow crops, dumping soil into the water.

"I think most sport fishermen agree with the closure, but it's too little, too late, is my take on it," he said.

Traverso said that while pot farms are a culprit, wineries, farms and other legitimate operations have rights to river water. "There's a lot of stressors on the water in California," she said. "We absolutely do the best we can on enforcement. It's no secret that California needs more wardens." Some counties only have one warden on duty to enforce wildlife regulations, she said.

GULF SPILL:

DOJ aims to extend BP's contract ban

Published: Thursday, January 30, 2014

The United States is seeking to continue its ban on allowing BP PLC to bid for new

government contracts and oil leases.

The government imposed the ban on the British oil giant in 2012 after finding BP had yet to completely address problems that caused the worst offshore oil spill in U.S. history in 2010. A year ago, the company pleaded guilty to 11 counts of felony seaman's manslaughter, two pollution violations and one count of lying to Congress as a result of the spill and its aftermath.

"Given this history, it was wholly reasonable" for U.S. EPA to "conclude that BP's latest round of plans and promises is insufficient to demonstrate that BP is a responsible federal contractor," said Robert Dreher, acting assistant attorney general of the Justice Department's environmental division, yesterday in a court filing.

BP, however, is fighting the ban. The British company claims the government is unfairly punishing it and is ignoring improvements it made after the accident.

"BP believes that the EPA's disqualification and suspension should be invalidated," said Geoff Morrell, a BP spokesman. "They are arbitrary and capricious, contrary to the law and an abuse of discretion" (Laurel Calkins, [Bloomberg](#), Jan. 29). -- **WW**

WATER POLLUTION:

Tests find formaldehyde in W.Va. taps -- scientist

Published: Thursday, January 30, 2014

A West Virginia environmental expert told a state legislative committee yesterday that he feared residents could be breathing formaldehyde gas after the chemical spill from a Freedom Industries Inc.-owned storage facility tainted the water supply for hundreds of thousands of people earlier this month.

Scott Simonton, a member of the state's Environmental Quality Board, said he was all but certain that one of two chemicals that leaked into the Elk River, 4-methylcyclohexane methanol, or MCHM, could break down into formaldehyde gas. The *Charleston Daily Mail* reported that the sample of formaldehyde was taken from the tap water at a downtown restaurant on Jan. 13.

State officials have assured residents that no danger remains in their drinking water. It wasn't clear whether the formaldehyde that appeared in the test result could be replicated in other areas, according to the head of the state's Department of Environmental Protection, Randy Huffman.

Simonton's claims were "totally unfounded," West Virginia Public Health Commissioner Letitia Tierney said in a statement (Michael Wines, [New York Times](#), Jan. 29). -- **SP**

WATER POLLUTION:

Oil company spills small amount of diesel in Mississippi River

Published: Thursday, January 30, 2014

Marathon Petroleum Corp. spilled 2 barrels of diesel fuel into the Mississippi River in Louisiana on Tuesday, the company reported.

The spill occurred at the company's Garyville, La., refinery, which produces about 490,000 barrels per day.

The company reported the spill promptly to the U.S. National Response Center and "responded very quickly to clean it up," a company spokeswoman said in an email (Chatterjee/Sethuraman, [Reuters](#), Jan. 29). -- **SP**

ClimateWire -- Fri., January 31, 2014 -- [Read the full edition](#)

1. NEGOTIATIONS: Foreign diplomats shrug off leaked report of U.S. spying and bugging at climate talks

Yvo de Boer, the former head of the U.N. Framework Convention on Climate Change who presided over the epic 2009 conference in Copenhagen, Denmark, says he learned nothing new in reports that the United States spied on diplomats there and prefers not to dwell on the past.

2. RISK: Unusual Senate coalition votes to delay flood insurance rate hike

The Senate's uncommon alliance on flood insurance led to an even rarer outcome yesterday, one in which conservatives sought more spending and Democrats abandoned environmental groups.

TODAY'S STORIES

3. RESEARCH: Methane emissions are rising, puzzling scientists -- report

4. NEGOTIATIONS: France prepares to rally the world to sign a 2015 global climate agreement

5. FORESTS: Drug traffickers drive up deforestation in Central America -- study

6. REGULATION: Compared with cities and states, feds 'late to the climate table' -- McCarthy

7. COMMUNICATION: The 'etiquette' of dealing effectively with climate change skeptics

8. FINANCE: Foundations pledge to shed ties to fossil fuels, reinvest in clean economy

9. POLICY: White House unveils new plan to cope with warming Arctic

10. BUSINESS: Tax incentives gave wind farm developers second wind in late 2013

11. NATIONAL SECURITY: Stresses of climate change create a more dangerous

world -- intelligence director

12. EDUCATION: UConn to launch climate change institute to protect state from impacts

13. AVIATION: E.U. officials wrestle with emissions regulations

14. NATIONS: Climate change pushes Senegal underwater

15. SPECIES: Climate change affects almost all penguins -- study

EnergyWire -- Fri., January 31, 2014 -- [Read the full edition](#)

1. ELECTRICITY: Canadian hydro gambles big on U.S. export market -- but at what cost?

NEW YORK -- The Northeast's power conundrum is well-known: In a nutshell, nuclear appears to be on the way out, coal is a nonstarter, local natural gas cracked from shale isn't entirely welcome, and technologies like wind and solar are still struggling to prove viability as base-load electricity. On top of that, pipeline expansion into the region continues to face obstacles, both financial and political, while micro-grids are emerging but immature. The net result is the Northeast still pays some of the highest energy bills in the country because it has to import gas from other states and rely on heating oil during the winter. So where does this bustling population center go for power from here?

ELECTRIC UTILITIES

2. FERC: White House taps enforcement guru to lead agency

3. SECURITY: For utilities looking to combat cyberattacks, information is power

4. ELECTRICITY: Collaborative working to manage NYC power demand under rate settlement

5. ELECTRICITY: Northeast utility offering credit for cold prices

6. UTILITIES: N.J. regulator recommends \$200M rate reduction

ALTERNATIVE ENERGY

7. NUCLEAR: DOE again pushes loan-guarantee deadline for Southern

OIL, GAS AND COAL

8. TRANSPORT: Gov. orders assessment of crude-by-rail shipments in N.Y.

9. OFFSHORE DRILLING: Gas well loses control in Gulf of Mexico

10. HYDRAULIC FRACTURING: Mich. landowner cites 'frack hits' in bid to stop drilling

11. OIL EXPORTS: Senate hearing puts spotlight on consumer impact

12. EARNINGS: Supermajors poised for rebound after weak 2013 earnings

13. PERMIAN BASIN: Boom town draws oil and gas 'dealmakers'

14. NEW YORK: No fracking decision until at least April 2015

15. NATIONS: Poland promises reform to stop exodus of shale explorers

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